

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)	
)	
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local)	CC Docket No. 01-338
Exchange Carriers)	

REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.

Suzanne Toller
Brendan Kasper
Davis Wright Tremaine LLP
One Embarcadero Center, Suite 600
San Francisco, CA 94111
Tel. (415) 276-6500
Fax. (415) 276-6599
Attorneys for AT&T Wireless Services, Inc.

Douglas I. Brandon
Vice President – Legal and External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W., 4th Floor
Washington, DC 20036
Tel. (202) 223-9222

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of

Review of the Section 251 Unbundling
Obligations of Incumbent Local
Exchange Carriers

)
)
)
)
)

CC Docket No. 01-338

REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. (“AWS”) hereby submits its reply comments in response to parties’ opening comments on the Commission’s *Further Notice of Proposed Rulemaking* (“FNPRM”) issued in the above-captioned proceeding.

The opening comments in response to the FNPRM demonstrate that the Commission should not alter its existing pick and choose rule. First, there is little support for the proposition that limiting the availability of the pick and choose rule will lead to more creative or innovative interconnection agreements as posited by the FNPRM. On the contrary, the opening comments show that limiting the use of the pick and choose rule will eliminate what little bargaining leverage competitive carriers currently possess which in turn will give the incumbent local exchange carriers (“ILECs”) less incentive to negotiate novel or inventive solutions. This will result in more protracted negotiations, more arbitration, and greater interconnection costs for competitive carriers.

Further, most opening comments, even many that support modifying the current pick and choose rule, oppose the FNPRM’s proposal to premise the elimination of the pick and choose rule on the availability of statements of generally available terms (“SGATs”). There are a

myriad of problems with relying on SGATs as substitutes for the pick and choose rule. Many ILECs have no SGATs. Many of the SGATs were subject to little or no state commission oversight or are now years out of date. The process of establishing new SGATs for those carriers without them and updating the existing SGATs would be an extremely time consuming and resource intensive process for the parties and for the state commissions. Even, if these problems could be overcome, it would be difficult to create an SGAT that could account for the wide variation in business operations among competitive carriers.

Finally, the Commission should not eliminate the pick and choose rule entirely, as suggested by some ILECs and their trade associations. As noted this elimination of the pick and choose rule would significantly reduce competitive carriers' bargaining power and make it more expensive and time consuming for carriers to enter into interconnection agreements.

I. THE COMMISSION SHOULD NOT ALTER THE EXISTING PICK AND CHOOSE RULE

In the FNPRM, the Commission tentatively concludes that altering the existing pick and choose rule would restore parties' incentives to engage in meaningful negotiations.¹ The tentative conclusion appears to be based on comments submitted by ILECs and a withdrawn petition by a CLEC. However, as a number of the opening comments correctly point out, it is unlikely that limiting the availability of the pick and choose rule will lead to more meaningful negotiations. A more plausible explanation for the lack of meaningful negotiations between

¹ See *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (Released: August 21, 2003) at ¶ 722.

ILECs and competitors is the disparity in bargaining power between the parties.² Meaningful negotiations will occur when the parties have the potential for mutual gain.³ While, the ILEC's possess ubiquitous facilities that all competitors need to access in order to compete,⁴ competitors have little to offer in return to the ILECs.⁵ In such a situation, negotiations only proceed because of legal compulsion, and it would be "naïve in the extreme to assume that eliminating pick-and-choose – a key aspect of that compulsion – would move the ILECs to negotiate more freely and engage in the sort of 'give-and-take' that the Commission envisions."⁶

In fact contrary to the Commission's tentative conclusion, eliminating the pick and choose rule will likely lead to less meaningful negotiations because it removes what little bargaining leverage competitors possess.⁷ A number of parties' comments illustrate how they have successfully used the availability of the pick and choose rule further negotiations with ILECs.⁸ Limiting the availability of the pick and choose rule would only make it more likely that competitors would be faced with choice of capitulating to ILEC demands or pursuing expensive and time consuming arbitration.

² See, e.g., Z-Tel Comments at 3-10, Sprint Comments at 2-4, NASUCA Comments at 9-22, Excel Telecommunications et al. at 9-11, ALTS Comments at 12-16, PACE/CompTel Comments at 5-7, U.S. LEC Comments at 3-5, WorldCom Comments at 14-16, NASUCA Comments at 7, and Cox Comments at 5-6.

³ See, e.g., Z-Tel Comments at 4, Sprint Comments at 3, and U.S. LEC Comments at 3-5.

⁴ See Sprint Comments at 4 and Excel Telecommunications et al. Comments at 10.

⁵ See Sprint Comments at 4 and Z-Tel Comments at 5.

⁶ Excel Telecommunications et al. Comments at 11.

⁷ See, e.g., PACE/CompTel Comments at 5-7, U.S. LEC Comments at 3-4, WorldCom Comments at 9-11, ALTS Comments at 4, and Cox Comments at 5-6.

⁸ See, e.g., Cox Comments at 5, LecStar Comments at 2-3, Rural Independent Competitive Alliance Comments at 3-4, WorldCom Comments at 11-12, Excel Telecommunications et al. Comments at 11, and CPUC Comments at 3.

Another important benefit of the existing pick and choose rule, which would be sacrificed under the Commission's proposal, is that it lowers the costs of interconnection. Competitors can quickly and inexpensively enter a market by piecing together an agreement that meets their business needs from parts of existing agreements.⁹ Limiting the availability of the pick and choose rule will make it more difficult to quickly and inexpensively obtain interconnection. Because competitors will not have a number of provisions from different agreements available for adoption, carriers will have to engage in lengthy negotiations in order to obtain agreements that meet their business needs. The ultimate result will likely be more arbitration,¹⁰ because as discussed above ILECs have little incentive to meaningfully negotiate. Increased costs from more negotiation and arbitration would in turn impede competition by requiring carriers to spend their limited resources on obtaining interconnection agreements, rather than improving their service or lower their rates.

II. THE COMMISSION'S SGAT PROPOSAL WOULD NOT EFFECTIVELY ADDRESS PROBLEMS CREATED BY LIMITING THE AVAILABILITY OF THE PICK AND CHOOSE RULE

While in theory the availability of an SGAT could to some extent mitigate the harm caused by limiting the availability of the pick and choose rule by allowing for a less time consuming and expensive way to obtain interconnection, most parties – including supporters of modifying the current pick and choose rule – oppose the Commission's SGAT proposal.¹¹ There are many difficulties with using the availability of an SGAT as a trigger to eliminate the pick and

⁹ See e.g., American Farm Bureau et al. Comments at 11-12, CPUC Comments at 3-4, Z-Tel Comments at 10-12, WorldCom Comments at 11-12, Excel Telecommunications et al. Comments at 12-13, and Cox Comments at 5.

¹⁰ See, e.g., WorldCom Comments at 18-20 and PACE/CompTel Comments at 8-10.

¹¹ See SBC Comments at 2-3, BellSouth Comments at 6-7, and Verizon Comments at 5-7 (support changing existing pick and choose rule but do not support the SGAT proposal for

choose rule. The opening comments show that in states where SGATs have already been adopted, the SGATs were adopted with little or no state commission oversight and are consequently very favorable to the ILEC.¹² Such agreements are likely to be of little use as a quick and inexpensive interconnection option. Similarly, out of date SGATs that do not reflect the current regulations will also not be useful to competitors.¹³ Moreover as the Commission notes in the FNPRM not all ILECs have SGATs.¹⁴

The process of updating and/or creating SGATs for all ILECs will likely be extremely burdensome and resource intensive for the telecommunications carriers¹⁵ and the states.¹⁶ Given the limited resources of competitive carriers, it is likely that many of these carriers will elect not to participate in the process, which in turn will result in SGATs that are not very balanced or useful. Even if the above problems could be overcome, by their one size fits all nature, SGATs are unlikely to effectively meet the business needs of most competitors.¹⁷ Therefore, negotiation and arbitration will still be necessary to address competitors' individual needs, which would obviously limit an SGATs effectiveness as a low cost means to obtain interconnection. Given that the current pick and choose rule has worked relatively well as a low cost means to obtain

various reasons).

¹² See, e.g., U.S. LEC Comments at 8, PACE/CompTel Comments at 8, NASUCA Comments at 23-24, WorldCom Comments at 17, Excel Telecommunications et al. Comments at 17-18, ALTS Comments at 10, and Cox Comments at 7.

¹³ See, e.g., MPower Comments at 8-9, WorldCom Comments at 17 (of the SGATs on file one-third are outdated and do not conform with current regulations), and Cox Comments at 7.

¹⁴ See also WorldCom Comments at 17 (almost 40% of the states do not have SGATs on file).

¹⁵ See, e.g., SBC Comments at 4-5, WorldCom Comments at 18, Sprint Comments at 6, and Cox Comments at 8.

¹⁶ See e.g., CPUC Comments at 5 and Cox Comments at 8.

interconnection,¹⁸ and the difficulties and shortcomings of the SGAT approach, it would seem unwise to adopt this approach.

III. THE COMMISSION SHOULD NOT FORBEAR ENTIRELY FROM ENFORCING ANY PICK AND CHOOSE REQUIREMENTS

Some ILECs and their trade associations claim that the FCC should forbear entirely from applying any form of pick and choose rule.¹⁹ Again they claim that this will lead to meaningful negotiation as envisioned by the Act. As discussed above, given the ILECs' market position, forbearing entirely from enforcing any form of the pick and choose rule will not lead to more meaningful negotiation.

Perhaps more importantly the goal of the Act is not to encourage voluntary negotiation, it is to promote competition. Forbearance is contrary to this goal. Forbearance would increase competitors' costs to provide service. With no low cost opt-in interconnection option, all competitors would have to engage in expensive and time consuming negotiation and arbitration. This turn negatively impacts competition. Competition is harmed when competitors are forced to spend resources that could otherwise be used to develop their business on trying to establish interconnection arrangements with ILECs that have little incentive to negotiate.

AWS anticipates that the importance of the pick and choose rule will only increase as the volume of wireless traffic increases and the number of wireline carriers that seek to require agreements for the exchange of traffic with wireless carriers increases. Within the last few years AWS has experienced an increase in the number of interconnection requests – particularly from smaller ILECs. In these cases often the volume of traffic is simply not large enough to justify

¹⁷ See, e.g., ALTS Comments at 10 and U.S. LEC Comments at 9-10.

¹⁸ See CPUC Comments at 3.

¹⁹ See, e.g., USTA Comments at 5-6, BellSouth Comments at 4-6, and Verizon

the expense of having to negotiate and arbitrate and interconnection agreement and existing agreements cannot, for one reason or another be adopted wholesale. In such cases, the pick and choose rules provides a useful alternative to either the “take it or leave it” offers of the ILECs or the full-blown negotiation/arbitration approach.

IV. CONCLUSION

For the forgoing reasons, AWS respectfully requests the Commission retain the existing pick and choose rule.

Respectfully submitted,

AT&T Wireless Services, Inc.

Suzanne Toller
Brendan Kasper
Davis Wright Tremaine LLP
One Embarcadero Center, Suite 600
San Francisco, CA 94111
Tel. (415) 276-6500
Fax. (415) 276-6599
Attorneys for AT&T Wireless Services, Inc.

/s/

Douglas I. Brandon
Vice President – Legal and External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W., 4th Floor
Washington, DC 20036
Tel. (202) 223-9222

Dated: November 10, 2003

Comments at 2-5.